

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TONY J JACKSON,

Plaintiff,

V.

RYAN LARSON, LAKEWOOD POLICE
DEPT, CITY OF LAKEWOOD,
LAKEWOOD TOWING, HOMELAND
SECURITY INVESTIGATIONS.

Defendants.

CASE NO. 3:15-CV-05258-RJB-JRC

REPORT AND RECOMMENDATION

NOTED FOR: August 14, 2015

The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States Magistrate Judge J. Richard Creature. The Court's authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR3 and MJR4.

Before the Court is plaintiff's motion for default judgment against defendant Homeland Security Investigations. Dkt. 11. Plaintiff also filed a motion to substitute defendant Homeland Security Investigations (Dkt. 20), which will be addressed in a separate order by the Court. The

1 Court recommends denying plaintiff's motion for default judgment as the Court's file shows that
2 defendant Homeland Security Investigations was not properly served.

3 Federal Rule of Civil Procedure 55, which governs the entry of default, gives plaintiff the
4 ability to move for default judgment if a defendant fails to plead or otherwise defend in a civil
5 action. Fed. R. Civ. P. 55. However, where a defendant has not been properly served, he does
6 not yet have a duty to plead, and entry of default is inappropriate. *Williams v. Kushner*, 2011 WL
7 1045092, at *1 (N.D. Cal. Mar. 23, 2011) (citing *Fisher v. Lynch*, 531 F.Supp.2d 1253, 1269 n.
8 12 (D. Kan. 2008)). A party's duty to file a responsive pleading to a complaint under Rule 12 is
9 triggered only upon sufficient service of process. *See Worrell v. B.F. Goodrich Co.*, 845 F.2d
10 840-42 (9th Cir. 1988).

11 Here, plaintiff was granted leave to proceed *in forma pauperis* (Dkt. 3) and filed a
12 complaint on May 4, 2015 (Dkt. 4). Plaintiff did not supply service addresses for the five named
13 defendants: Lakewood Police Department, Ryan Larson, City of Lakewood, Lakewood Towing,
14 and Homeland Security Investigations. The Clerk's Office attempted to locate the proper service
15 addresses for each defendant and mailed them the complaint and waivers of service forms. *See*
16 Dkt. 5. However, the Clerk's Office is not responsible for verifying an appropriate service
17 address for any of the defendants.

18 Defendants Ryan Larson and the City of Lakewood returned waivers of service (Dkt. 8)
19 and filed an answer (Dkt. 12). Defendant Lakewood Towing filed an answer (Dkt. 16).
20 Defendants Lakewood Police Department and Homeland Security Investigations failed to timely
21 return the signed waiver of service and have not filed an answer.

22 On June 15, 2015, plaintiff filed three motions for default judgment. Dkts. 9, 10, 11. The
23 Court entered an order on June 24, 2015 directing plaintiff to provide the complete addresses for
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1 defendants Lakewood Police Department and Homeland Security Investigations by July 24, 2015
2 so that the Court could again attempt service by mail. Dkt. 19.

3 Plaintiff has not provided the Court with an address of defendant Homeland Security
4 Investigations and there is nothing in the record to indicate that this defendant has been served
5 with plaintiff's complaint. Without sufficient service, defendant Homeland Security
6 Investigations' duty to plead and respond to plaintiff's complaint has not been triggered. *See*
7 *Williams*, 2011 WL 1045092 at *1. Accordingly, the Court recommends that plaintiff's motion
8 for default judgment against Homeland Security Investigations be denied.

9 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have
10 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P.
11 6. Failure to file objections will result in a waiver of those objections for purposes of de novo
12 review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit
13 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on
14 August 14, 2015, as noted in the caption.

15 Dated this 20th day of July, 2015.

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18 J. Richard Creatura
19 United States Magistrate Judge
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